IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6456 OF 2006

Abhilasha Co-operative Housing
Society Ltd. ..Petitioner

Vs.

Vijay Chotalal Katbamna & Ors. ..Respondents

WITH

WRIT PETITION NO.6457 OF 2006

Abhilasha Co-operative Housing
Society Ltd. ..Petitioner

Vs.

Ashok Chotalal Katbamna & Ors. ..Respondents

WITH

WRIT PETITION NO.6475 OF 2006

Abhilasha Co-operative Housing
Society Ltd. ..Petitioner

Vs.

Subhash Chotalal Katbamna & Ors ..Respondents

WITH

WRIT PETITION NO.6476 OF 2006

Abhilasha Co-operative Housing
Society Ltd. ..Petitioner

Vs.

Dilip Chotalal Katbamna & Ors. ..Respondents

Mr.Girish Desai with Mr.R.K.Bhasin and Mrs.S.R.Bhasin for the petitioner

Ms.Rita Bhatia for respondent nos.1 and 2

Mr.A.P.Vanarse, A.G.P. for respondent no.4

CORAM : A.P.DESHPANDE, J

DATED : 9TH NOVEMBER, 2006

P.C.:

1. As a common question of fact and law arise for adjudication in all these petitions, these petitions are heard together and are being disposed of by this common order.

2. These petitions are filed by the Co-operative Housing Society challenging the order passed by the Divisional Joint Registrar which in turn confirms the order passed by the Deputy Registrar, Co-operative Societies declaring that the respondents are deemed members of the petitioner society and the said declaration is made under section 22 (2) of the Co-operative Societies Act, 1960.

3. The present petitioner filed a dispute bearing no.306 of 2002 against one Mafatlal Bafna who is a promoter member of the society for recovery of various charges such as municipal tax, maintenance charges and other outgoings. According to the petitioner, the said Bafna was in arrears of more than Rs.20 lacs. The petitioner was apprehending that Mr. Bafna may dispose of flats on 17th and 18th floor to third parties without clearing the dues of the society and hence, an application was filed claiming temporary injunction against Mr.Bafna, before the Co-operative court. The Co-operative court granted injunction. However, the other prayer made for deposit of the amount was rejected. Hence, the matter was carried to the Co-operative Appellate court by filing an appeal against the said order by the present petitioner. The Co-operative Appellate court by its order dt.1.7.04 directed Bafna to deposit a sum of Rs.10,50,000/- which was approximately ascertained as amount due and receivable by the petitioner society from Mr.Bafna, within the stipulated period. This payment however, was without prejudice to the rival contentions of the

parties. The material direction reads as under:

> "On payment of said amount, the respondent shall be at liberty to depose of four incomplete flats on 17th floor of A Wing and 18th floor of B Wing as per his choice and the appellant society shall issue necessary No Objection Certificate. The society shall issue membership certificate to the respondent and in case of transfer of the said four flats, the society shall also admit the purchaser as its member."

4. Pursuant to the said order, after deposit of sum of Rs.10,50,000/-, Bafna sold the four flats which are purchased by the respondents herein. The flats came to be purchased by the respondents on the basis of the order passed by the Co-operative Appellate Court dt.1.7.05, so also on the basis of no objection issued by the society in regard to the sale of the flat. In this fact- situation, when the respondents were not admitted to the membership of the society, they moved the Deputy Registrar, Co-operative Societies under section 22(2) and the authority granted declaration in their favour that they have assumed the status of deemed member of the society. Aggrieved by the said order, revision application is preferred by the present petitioner society before the Divisional Joint Registrar,

Co-operative Societies and the Divisional Joint Registrar concurring with the view taken by the Deputy Registrar has confirmed the deemed membership of the respondents. It is this order, which confirm the order passed by the Deputy Registrar, that is challenged in the instant petition.

5. The learned counsel for the petitioner society has contended that while effecting the sale of the flats, Mr. Bafna has also transferred the terrace which was for common use of the members. He further submits that some open space on the ground has been also transferred for garage which according to him is impermissible as the land was for common use of all the members. Per contra, the learned counsel for the respondents purchasers / members has submitted that one building is of 17 floors where as the other building is of 18 floors and two flats on the 18th floor of one building has as appurtenant area the terrace whereas in regard to the garage, it is contended that the same is for parking and has been purchased on no objection issued by the society. These issues which are

sought to be raised in this petition in regard to the sale of terrace and / or garage are not germane to the present petitions.

6. The only issue which arise in these petitions is as to whether the authorities below have rightly declared the respondents as deemed members of the society u.s.22 (2) of the Co-operative Societies Act.

7. On perusal of the orders passed by the Deputy Registrar and Divisional Joint Registrar, it is crystal clear that the respondent purchasers are bonafide purchasers and have purchased the flats under the order passed by Maharashtra State Co-operative Appellate Court dt.1.7.04, so also the no objection issued by the Co-operative Society. In this view of the matter, the impugned orders are perfectly legal and valid. It is made clear that neither the impugned orders nor this order in any way pronounce on the legality or otherwise of the purchase of terrace or the garage. It shall be open for the parties to adopt appropriate remedy before the proper forum, if so advised in that

regard. With these observations, writ petitions are summarily dismissed.

(SHRI A.P.DESHPANDE, J)